(6)

cf 206/

IN THE HIGH COURT OF JUDICATURE AT BILASPUR CHHATTISGARH

Single Bench

SECOND APPEAL NO. 509 OF 2005

APPELLANTS PLAINTIFFS :

1. Ram Prasad, S/o Late Shri Dheer Sai, Aged about 47 years.
2. Suraj Bhawan Singh, S/o Late Shri Dheer Sai, Aged about 43 years.
3. Mangal Bhawan Singh, S/o Late Shri Dheer Sai, Aged about 40 years.

All are caste Kanwar, R/o Village Chun Chuni Para, Gevra Basti, Tehsil Khatghora, District Korba (Chhattisgarh).

P.R. No. 2294/05
Presented by Shri R. Jain Advocate
dated 18/11/05

Versus

RESPONDENTS DEFENDANTS :

1. Ram Bharos, S/o Manmohan, Aged about 60 years.
2. Ram Nath, S/o Manmohan, Aged about 66 years.
3. Ram Charan, S/o Manmohan, Aged about 64 years.

All are caste Kanwar, R/o Village Chun Chuni Para, Gevra Basti, Tehsil Khatghora, District Korba (Chhattisgarh).

4. State of Chhattisgarh, Through the Collector, Korba, District Korba (Chhattisgarh).

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18.11.05
CLERK to A. G. BILASPUR

SECOND APPEAL UNDER SECTION 100 OF THE CODE OF CIVIL PROCEDURE.

(25)

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

यामला क्रमांक S.A.509 सन् 2005

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	26.04.2006 Shri H.S.Patel, learned counsel for the appellant/plaintiffs. Heard on admission. 2. The appellants/plaintiffs have preferred this appeal under Section 100 of the Code of Civil Procedure against the impugned judgment dated 10th August 2005 passed by District Judge, Korba in Civil Suit No. 71-A/04 whereby the learned District Judge allowing the appeal preferred by the respondents/defendants against the judgment dt. 06.01.2004 passed by learned Civil Judge, Class-II, Katghora in C.S.No. 20-A/02, set aside the judgment and decree passed in favour of the appellants/plaintiffs and dismissed their suit. (Parties hereinafter referred to as per their description before the trial Court) 3. The plaintiffs filed a civil suit for declaration and partition averring therein that original plaintiff Dheersai and father of defendants No. 1 to 3 Manmohan are real brothers. The suit land admeasuring 2.93 acres was jointly recorded in the name of Dheersai and defendants No. 1 to 3. Father of defendants Manmohan had sold certain land for his own purposes and in lieu of which he had handed over the possession of Khasra No. 315, area 0.50 acres to his brother Dheersai. Dheersai and defendants No. 1 to 3 went to Halka Patwari on 19.11.2001 and requested him to partition the joint holdings bearing Khasra No. 315 equally between the parties whereupon the Halka Patwari obtained their signatures on some papers and assured that partition will be effected. However, Naib Tehsildar, Sub Tehsil Deepka, vide order dated 21.11.2001 instead of partitioning the property equally among the parties assigned only 1.02	

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आदेश पत्रक

मामला क्रमांक S.A. 507 सन् 2005

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित — 2 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

acres of land to the share of plaintiffs and the remaining 1.90 acres of land was given in the share of the defendants. Even the land bearing Khasra No. 315 which was to be given to the plaintiffs was also partitioned between the parties.

4. The plaintiffs challenged the order of Tehsildar before the Sub Divisional Officer, Katghora on 22.01.2002 under Section 44 of the M.P. Land Revenue Code which was rejected by the S.D.O. on 29.01.2002. Therefore, the instant suit for partition was filed.

5. In the written statement the defendants denied the averments in the plaint and averred that partition between Manmohan and Dheersai had taken place 70-72 years back. Thereafter, the defendants have also partitioned the land allotted to the share of Manmohan among themselves and since then they are in separate possessions. By the order dated 21.11.2001 the Naib Tehsildar, Deepka effected partition as per the actual possession of the parties. The contention of the plaintiffs that the land bearing K.No. 315 area 0.50 acre was given separately to Dheersai, was also denied. It was further averred that the mutation was effected with the consent of father of the defendant in their presence.

6. On the basis of pleadings of the respective parties, issues were framed and after recording evidence the trial Court decreed the suit by recording a finding that the order of mutation dated 21.11.2001 passed by Naib Tehsildar, Deepka was illegal and the plaintiffs and defendants are entitled for equal shares. Being aggrieved by the order of the trial Court the defendants preferred appeal before the first appellate Court and learned District Judge by the impugned judgment allowed the appeal, set

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मामला क्रमांक S.A. 509/05 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —3—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

aside the judgment of the trial Court and dismissed the suit of the plaintiffs.

7. Learned counsel for the appellants/plaintiffs submits that the judgment of the first appellate Court is based on improper appreciation of the evidence available on record and the same has been passed by ignoring the entries available in the document of Ex. P/1 being the order of mutation passed by Naib Tehsildar, Deepka, Katghora as a bare perusal of the said order shows that signatures/thumb impression of the plaintiffs are not available in the said order and it has been simply recorded that the order is passed in the presence of the parties. Therefore, it is contended that the following substantial questions of law arise for adjudication of this appeal

(i) "Whether the lower appellate Court was justified in setting aside the finding of the trial Court wherein it has been clearly held that no partition was effected during the lifetime of Dheersai and Manmohan?"

(ii) "Whether the Hindu Law is applicable in the case of plaintiffs and defendants who are members of Scheduled Tribe community?"

8. I have heard learned counsel for the appellants/plaintiffs on admission of this appeal.

9. The learned District Judge after referring to the statements of the plaintiffs' witnesses and discussing the same in detail has arrived at the conclusion that the pleadings of the plaintiffs in the plaint are contradicted

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आदेश पत्रक

मामला क्रमांक SA-509/05 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित — ५ —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

by their own witnesses PW-1 Ram Prasad and PW-2 Suraj Bhawan Singh who are themselves plaintiffs and that also from the statement of independent witness PW-3 Dular Sai who claims to be of 75 years and the statements on oath of these witnesses, it is established that partition in the family had been effected between the parties and after partition the parties were cultivating their shares separately. Meticulously discussing the evidence available on record the first appellate Court has held that since 30-35 years the parties are in separate possessions of their respective shares, therefore, a fresh order of partition could not be passed ignoring the earlier partition. Referring to the document of Ex.P/1 it is held that the mutation order was passed in presence of the parties.

10. On the other hand, learned Civil Judge while decreeing the suit of the plaintiffs had ignored the admission of the witnesses of the plaintiffs and also ignored the fact that the order dt. 21.11.2001 which has been filed by the plaintiffs as Ex.P/1, mentioned that order of mutation was passed with the mutual consent of the parties solely on the ground that the plaintiffs have denied any such consent and the partition was not equitable.

11. After going through the record and the judgment of the first appellate Court as also judgment of the trial Court, this Court is of the opinion that the learned District Judge has recorded a finding of fact after discussing the evidence available on record in detail and correctly arrived at the conclusion that plaintiffs have failed to establish that the property in question was the property of joint family and no partition was effected between the father of the plaintiffs and the defendants. The above question is question of fact. There is no perversity or illegality in the order passed by

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	the learned District Judge and no substantial question of law is involved in this appeal for its adjudication. The appeal being devoid of merits deserves to be dismissed at the motion stage itself and the same is accordingly dismissed. **Sd/-** **Dhirendra Mishra** **Judge**	8/05/06